

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-745

Application of Elizabeth Darden for a certificate of)
public good for an interconnected net metered)
photovoltaic electrical power system)

Order entered: 1/27/2010

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") impose sanctions related to the application filed by Elizabeth Darden ("Petitioner" or "Applicant") for a certificate of public good ("CPG") for a net metered photovoltaic generation facility in Morrisville, Vermont.

II. BACKGROUND

This case involves an application filed by the Applicant on August 18, 2009, requesting a CPG, pursuant to 30 V.S.A. §§ 219a and 248 and Board Rule 5.100, for a net metering system. The net metering project consists of a photovoltaic system located on the Applicant's property in Morrisville, Vermont. The Board appointed me, Gregg Faber, as the Hearing Officer for this proceeding.

In response to a request for additional information regarding the application, the Applicant submitted an e-mail to the Board on September 7, 2009, stating, among other things, that the net metering system has already been installed without Board approval. On September 9, 2009, the Board issued a memorandum requesting comments and requests for hearing on the Applicant's apparent violation of the § 248 prohibition of site preparation and construction without approval.

On October 30, 2009, Thomas Amidon, Esq., filed a response on behalf of the Applicant. Mr. Amidon does not dispute that the Applicant installed the project without Board approval.

Mr. Amidon, however, states that the Applicant was unaware that a CPG was "necessary prior to commencement of construction." Mr. Amidon did not request a hearing in this matter.

III. FINDINGS

Pursuant to 30 V.S.A. § 30, the Board may impose penalties for violations of 30 V.S.A. § 248 and for willful hindrance, delay, or obstruction of the Board in the discharge of its duties. Section 30 also requires notice and opportunity for hearing prior to imposition of a penalty under the section. In this case, there appear to be undisputed facts supporting the imposition of a penalty. In this Proposal for Decision, I will set forth these facts and the penalty that I propose.

The following facts appear to be undisputed:

1. On August 18, 2009, the Applicant filed an application for a CPG for a net-metered photovoltaic system to be erected on her property at 3425 Randolph Road in Morrisville, Vermont. Application at Section 1.
2. The project consists of a pole-mounted photovoltaic array. The system-rated power output of the system is 9.12 kW AC. Application at Section 4.
3. The project was installed on or around September 8, 2009. E-mail from Applicant to Board dated September 7, 2009.

IV. DISCUSSION

Pursuant to 30 V.S.A. § 248(a)(2):

. . . no person . . . may begin site preparation for or construction of an electric generation facility . . . unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect.

The material facts in this case do not appear to be in question. The Applicant admits that the system was installed without Board approval, but asserts that she was unaware that approval of the net metering application was required prior to construction of the project. While I have no reason to doubt the Applicant's ignorance of Board requirements, the fact remains that the Applicant and her installer have disregarded Board Rules and statutory provisions by installing the project without approval. I also believe that the Applicant's installer, by not informing the Applicant of this fundamental requirement, is in large part responsible for the violations committed with regard to this project. Nonetheless, it is ultimately the responsibility of the

Applicant, in signing the application and attesting to its truthfulness, to ensure compliance with Board Rules and statutory provisions.¹ Accordingly, I conclude that the Applicant violated 30 V.S.A. § 248(a)(2) by constructing the facility without first obtaining a certificate of public good. Therefore, a penalty should be imposed pursuant to 30 V.S.A. § 30.

The non-compliance of the Applicant and the installer in this case has broad and serious implications for the entire net metering program in Vermont. The net metering application and approval process was designed by the Board to be simple and expedient for applicants, provide appropriate safety and reliability of the electric system, and to provide adequate notice and opportunity for those impacted by the system. In maintaining this balance, the Board relies heavily on the applicants and installers to know and comply with Board rules and statutory provisions governing these projects and to provide accurate information to the Board. If the Board can no longer rely on this compliance and the representations of applicants, the process will need to become less streamlined and more cumbersome in order to ensure compliance with the legal requirements and reliability of the information presented. Therefore, I conclude that a significant financial sanction against the Applicant is warranted.

Pursuant to 30 V.S.A. § 30(b)(2) the Board may impose a civil penalty up to \$40,000 and, in the case of continuing violation, up to \$10,000 per day not to exceed \$100,000 for violations of 30 V.S.A. § 248. Section 30(c) sets forth a list of factors that the Board may consider when determining the amount of penalty, including whether the respondent knew or had reason to know the violation existed and whether the violation was intentional, the length of time the violation existed, and the deterrent effect of the penalty. In a similar case involving the installation of a net-metered system without approval, the Board imposed a penalty of \$1,000.00.² However, that case also involved false statements made on the application form. In this case, I recommend that the Board impose a \$500.00 penalty against the Applicant as a reasonable and appropriate sanction given the circumstances of this case.

1. The Board does not have jurisdiction to address any claims that the Applicant may have against her installer with regard to his actions and representations in connection with this installation.

2. See CPG #NM-698, Order issued August 18, 2009.

V. RECOMMENDATION

Based on the review of the record in this docket and the reasons set forth in the above discussion, I recommend that the Board impose a penalty of \$500 against the Applicant. Once the Applicant has paid the \$500 penalty, I recommend that the Board approve the Applicant's petition for net metering.

A Proposal for Decision pursuant to 3 V.S.A. § 811 has been served upon the parties to this case.

Dated at Montpelier, Vermont, this 19th day of January, 2010.

s/Gregg C. Faber

Gregg C. Faber
Hearing Officer

VI. BOARD DISCUSSION

On January 7, 2010, the Department filed a letter with the Board contending that the penalty of \$500 recommended in the Proposal for Decision ("PFD") "is appropriate for the reasons discussed in the PFD." The Department also encourages the Board to include as part of the net metering application form an attestation from the system installer that the construction of the system is in compliance with statutory requirements and Board rules. The Department also submitted a copy of a letter sent to Renewable Energy Vermont, the administrator of the list of approved installers eligible for incentive grants, notifying the organization of the system installer's (Penobscott Solar Design) non-compliance in this case.

On January 4, 2010, the Applicant submitted a check in the amount of \$500 in payment of the fine proposed in the Hearing Officer's PFD. On January 13, 2010, the Applicant's attorney also submitted a check in the amount of \$500 in payment of the fine.³ The Applicant asserts that while the imposition of a penalty "is totally inappropriate," because the Applicant's actions were based on "innocence and misinformation," she has submitted the payment to avoid prolonging this case and incurring additional costs and expenses. No other comments on the PFD have been filed with the Board.

After considering the Applicant's compliance with the recommendations in the PFD and payment of the fine proposed in the PFD, and based on our review of the record in this case, we accept the recommendation of the Hearing Officer in the PFD and approve the Applicant's request for a certificate of public good for the net metering project, pursuant to 30 V.S.A §§ 219a and 248. However, we, like the Hearing Officer, are extremely concerned by the actions of the Applicant and her installer in this case. The Applicant's reliance on the installer of the system to construct the system in accordance with statutory and Board requirements does not excuse the Applicant from ultimate responsibility for the system's compliance with those requirements. We also wish to commend the Department for its letter notifying Renewable Energy Vermont of the installer's non-compliance in this case. Finally, we adopt the Department's recommendation and will require applicants to include an attestation of compliance

3. The duplicate payment was subsequently returned to the Applicant's attorney.

from the installer as part of the net metering application in an effort to deter future non-compliance by applicants and installers.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings of fact, conclusions, and recommendation of the Hearing Officer in this case are adopted.
2. A civil penalty in the amount of Five Hundred Dollars (\$500.00) is imposed on the Applicant. The check in that amount submitted to the Public Service Board by the Applicant, on January 4, 2010, is accepted as payment in full of this civil penalty.
3. Applicant's petition for a certificate of public good pursuant to 30 V.S.A. § 248 is approved and a certificate of public good for Applicant's net metering project shall be issued.
4. Construction, operation and maintenance of the net metering system shall be in accordance with the plans and evidence submitted in this proceeding. Any material or substantial change in the project is prohibited without prior Board approval.
5. The net metering system shall comply with applicable existing and future statutory requirements and Board Rules and Orders.
6. In the event the certificate of public good is transferred pursuant to Board Rule 5.109(C)1, the new owner of the system must file the required certificate transfer form with the Board prior to commencing operation of the system.

Dated at Montpelier, Vermont, this 27th day of January, 2010.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 27, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.